

Application No: 10/802,025
Our reference: 3195CIP

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Remarks

Telephonic Interview

The Examiner is thanked for granting the telephonic interview that was held on July 3, 2007. During the interview the Examiner stated that in view of the amendment to claim 1 set forth above and the arguments set forth for claim 17 below, the final rejection would be withdrawn and the claims would be passed to issue. The Examiner is thanked for this action.

Amendments

Claim 1 has been amended to better distinguish the technology included in this claims from the brick cleaning method described in the applied references. All amendments are fully supported by the original disclosure of this application.

Discussion

Claims 1-20 are pending in the application and claims 1-8, and 15 stand rejected under 35 U.S.C. § 102(b) over GB 2 288 363 (Gerrard). Claim 17 stands rejected under 35 U.S.C. § 103(a) over Gerrard. Claims 9-14 and 19 stand rejected under 35 U.S.C. § 103(a) over Gerrard and U.S. Patent 3,087,483 (La Velle). Claims 16, 18 and 20 are rejected under 35 U.S.C. § 103(a) over Gerrard and U.S. Patent 4,557,246 (Secley). For the following reasons it is believed that the rejections have been overcome.

For purposes of this discussion, the six faces of a brick will be referenced as follows. The front face is the face that is exposed when the brick is laid in a normal fashion in forming a structure. The front face has little or no cement or concrete on it. The face opposite the front face is called the rear face, while the faces that are on the top

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and bottom of a brick when laid in a normal fashion are the top and bottom faces respectively. The two ends of a brick are opposing ends.

Argument for claim 1

Claim 1 is amended to require that the mortar is cut from the rear of the brick at a time that is different from the time mortar is cut from the top and bottom of the brick. Claim 1 was previously amended to recite that mortar was cut from the rear, top and bottom and opposing ends in separate steps. The Examiner is of the opinion that Gerrard "separately" strips mortar off the rear and top and bottom sides of a brick because, while these steps occur simultaneously in Gerrard, the device of Gerrard uses separate scrapers for these surfaces. Final rejection, page 4. While applicant disagrees with this interpretation of Gerrard, it is believed that the above proposed amendment to claim 1 removes any doubt that the claimed method is different from the method described in Gerrard.

Specifically, claim 1 now requires that the mortar is removed from the rear of the brick at a time different from the time mortar is removed from the top and bottom of the brick. In contrast, the device of Gerrard simultaneously removes mortar from the rear, top and bottom of the brick. Thus, Gerrard does not anticipate claim 1 as amended.

Withdrawal of the rejection is courteously solicited.

Argument for claim 17

The Examiner agrees that the device of Gerrard uses a "computer to control all steps of the method." Final rejection, page 2. In contrast, claim 17 requires that the first cutting device is not controlled by the computer. The Examiner is of the opinion that it would have been obvious to eliminate computer control of any step where the control is

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not desired, citing In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965) and In re Kuhle, 526 F.2d 553, 188 USPQ 7 in support. Id. The rejection is respectfully traversed.

It must be kept in mind that "[n]ecessarily it is facts in the record, rather prior decisions in and of themselves, which must support the legal conclusion of obviousness under 35 U.S.C. § 103." In re Cofer, 354 F.2d 664, 667, 148 USPQ 268, 271 (CCPA 1966). While the facts in Larson and Kuhle may support the proposition for which the Examiner cites those cases, the facts in this case do not.

Here, the computer controlled embodiment of Gerrard is illustrated in Fig. 3 of the reference. As seen, the computer controls ram 40 which pushes brick 42 through die arrangement 44 where mortar is stripped from the rear, front and opposing sides simultaneously. Because of that arrangement, it is impossible to delete the computer control of only one mortar stripping step in the Gerrard device as the Examiner proposes. In other words, since Gerrard strips mortar from the elongated sides of the brick simultaneously, it is not possible to provide computer control of the steps as required by claim 17 where a first cutting device used to strip mortar from one elongated face of the brick (rear face) is not controlled by the computer while another cutting device used to strip mortar from a different elongated face of the brick (top face) is computer controlled.

Since the Examiner's proposed modification of Gerrard is not possible, the obviousness rejection of claim 17 is improper. Withdrawal of the rejection is courteously solicited.

Argument for dependent claims 2-16 and 18-20

As stated above, the Examiner indicated that independent claims 1 and 17 are now patentable over Gerrard. Thus, by extension their dependent claims are also patentable. Withdrawal of the rejections is courteously solicited.

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Summary

These changes were discussed with Examiner Rachuba on July 3, 2007 during a telephone conversation. Examiner Rachuba was convinced these changes overcame the current rejection as she graciously indicated the rejections would be withdrawn pending acceptance from further review.

Respectfully submitted,



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